

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT A. SALDANA,

Plaintiff,

v.

SEIBEL, *et al.*,

Defendants.

Case No. 1:23-cv-01002-BAM (PC)

ORDER REGARDING PLAINTIFF'S
VOLUNTARY DISMISSAL

(ECF No. 11)

Plaintiff Robert A. Saldana ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. On August 16, 2023, the Court screened the complaint and granted Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal. (ECF No. 8.) On September 18, 2023, following an extension of this deadline, Plaintiff filed a voluntary dismissal of this case pursuant to Federal Rule of Civil Procedure 41. (ECF No. 11.)

"[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the district court lacks jurisdiction to do anything about it." *Id.* at 1078. No defendant has

1 been served in this action and no defendant has filed an answer or motion for summary
2 judgment.

3 As Plaintiff did not specify whether the dismissal is with or without prejudice, the Court
4 finds that a dismissal without prejudice is appropriate. Fed. R. Civ. P. 41(a)(2).

5 Accordingly, this action is terminated, without prejudice, by operation of law without
6 further order from the Court. Fed. R. Civ. P. 41(a)(1)(A)(i). The Clerk of the Court is directed
7 close this case.

8
9 IT IS SO ORDERED.

10 Dated: September 19, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE